



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## REVIEW CONSIDERATION DECISION

Dispute Codes: MNSD

### Introduction

On October 15, 2012 Dispute Resolution Officer (DRO) XXXXX provided a decision on the tenant's Application for Dispute Resolution seeking a monetary order for return of double the amount of the security deposit. The hearing had been conducted on October 15, 2012.

That decision dismissed the tenant's Application. The tenant did not request an extension of time to apply for Review Consideration.

Division 2, Section 79(2) under the *Residential Tenancy Act* says a party to the dispute may apply for a review of the decision. The application must contain reasons to support one or more of the grounds for review:

1. A party was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control.
2. A party has new and relevant evidence that was not available at the time of the original hearing.
3. A party has evidence that the director's decision or order was obtained by fraud.

The tenant submits in her Application for Review Consideration that that she has new and relevant evidence that was not available at the time of the original hearing; and she has evidence that the director's decision was obtained by fraud.

### Issues

It must first be determined if the tenant has submitted her Application for Review Consideration within the legislated time frames required for reviews.

If the tenant has submitted her Application within the required time frames it must be decided whether the tenant is entitled to have the decision of October 15, 2012 suspended with a new hearing granted because she has provided sufficient evidence to establish that she has new and relevant evidence that was not available at the time of the original hearing; or she has evidence the decision was based on fraud.

### Facts and Analysis

Section 80 of the *Act* stipulates that a party must make an Application for Review Consideration of a decision or order within 15 days after a copy of the decision is received by the party, if the decision does not relate to a matter of possession of the rental unit; a notice to end tenancy; withholding consent to sublet; repairs or maintenance or services and facilities.

From the decision of October 15, 2012 the issues before the DRO were related to the tenant's claim for return of her security deposit. As such, I find the decision and order the tenant is requesting a review on do not relate to the matters identified above and as such the tenant was allowed 15 days to file their Application for Review Consideration.

From the tenant's submission she indicates that she received the October 15, 2012 decision verbally on October 15, 2012 and filed her Application for Review Consideration with the Residential Tenancy Branch on October 16, 2012 (1 day after receipt of the decision (verbally)). I find the tenant has filed her Application for Review Consideration within the required timelines.

The tenant submits that she has a witness available to provide testimony that she provided the landlord with her forwarding address the day she gave him her keys. The tenant states, in her Application for Review Consideration "I thought I would not need my witness on the phone. In past hearings they called them after the hearing."

When the tenant submitted her Application for Dispute Resolution and a hearing was scheduled she was provided with a Notice of Hearing document as well as a Fact Sheet entitled "The Dispute Resolution Process". This Fact Sheet provides instructions on how to prepare for a hearing and includes specific directions on how to be prepared to call your witnesses into the hearing.

Specifically it states:

"Witnesses must be at the hearing location at the start time for face-to-face hearings; for conference call hearings, the party calling the witness must have a telephone number where the witness can be reached and the witness must be available at that number for the full duration of the scheduled hearing.  
See Fact Sheet #RTB-127 Preparing for Dispute Resolution."

In Fact Sheet #RTB-127 the section on witnesses states:

"Have your witnesses available in person or by telephone to testify at the hearing. If a witness cannot be available for the hearing they can provide a written statement."

From these publications provided to or available to the Applicant tenant it is clear that witnesses must be present and participate in the hearing and if

they cannot be present at the hearing, the Applicant may provide a written statement for consideration by the DRO.

The tenant, despite her assertion about her experience in previous hearings, does not specifically state why she believes witnesses would have been called after those hearings.

Residential Tenancy hearings are quasi-judicial proceedings and as such all testimony from all parties and their witnesses must be provided during the hearing so both parties have an opportunity to be heard; present evidence they believe substantiates their claim; and provide witness testimony and an opportunity for the other party to address the witness's testimony either by questioning the witness or providing rebuttal testimony to the witness's testimony.

In addition, the original decision does not indicate that the tenant either had a written statement from a witness or that she even had a witness the event she states in her Application for Review Consideration.

Failure of the tenant to not have the witness available for the hearing or to have the witness provide a written statement into evidence does not constitute new evidence that was not available but rather shows the evidence was in fact available but the tenant chose not to provide. As such, I find the tenant cannot now rely on this failure as a sufficient ground to be granted a new hearing.

As to the tenant's submission that the decision was obtained based on fraud the tenant does not indicate what evidence or testimony submitted for the original hearing was false. She also does not indicate how the person who submitted the information knew it was false.

The tenant does submit she that "because he lied, I would not have giving him the house key without the letter" is how she believes the landlord used the false information to get the desired outcome.

However, for the tenant's claim that she had new and relevant evidence and the landlord obtained the decision based on fraud the tenant has provided no evidence to support these claims. From the Application it appears the tenant makes these claims because she has a witness and while not providing any witness statements to the original hearing she also has not provided a witness statement regarding these allegations in her Application for Review Consideration.

As such, I find the tenant has failed to establish that the order was obtained based on fraud.

Decision

As the tenant has failed to provide sufficient evidence to establish either ground for a new review, I dismiss her Application for Review Consideration.

The decision made on October 15, 2012 stands.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 24, 2012.

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Residential Tenancy Branch